IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.292 OF 2005
IN
SUMMARY SUIT NO.807 OF 2005

M/s.Rajco Metral Industries
Pvt. Ltd. ..Plaintiffs.

Vs.

ESAB India Ltd. ..Defendants.

Mr.K.R.Bulchandani with Mr.L.K.Bulchandani with Ms.Chaitra i/b.M/s.Kamal & Co. for the Plaintiffs.

Mr.B.G.Wadhwa for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 5TH DECEMBER, 2005

P.C. :

The suit is filed inter-alia to recover the price of goods sold and delivered by the Plaintiffs to the Defendants.

2. As regards the rest of the claim, I intend granting unconditional leave only due the facts and circumstances of this case. It is therefore not necessary for me to deal with part of the claim.

3. It appears that the Plaintiffs sold and delivered to the Defendants goods under seven

invoices listed in Part-I of Exhibit "L" to the plaint. The Defendants made payment in respect of one invoice. In respect of another invoice, the Defendants made only token part-payment of Rs.624/-.

4. The Plaintiff's case is that these goods were supplied as per the instructions of the Defendants directly to Wockhardt Hospital. The Wockhardt Hospital has confirmed the receipt of the said goods.

5. On behalf of the Defendants, it was submitted that they were not aware as to whether in fact, the goods were supplied or not. The Defendants either ought to admit or deny the receipt of the goods. They have the means of ascertaining whether the goods were in fact supplied or not. The averment that they were not aware of or they have not admitted the receipt is of no significance.

6. It is pertinent to note that receipt of the suit invoices and "C" forms in paragraph 13 has not been denied. The same therefore indicates not only the receipt of the goods but the fact that the goods were supplied in accordance with the terms and conditions contained in the suit invoice. It is

also important to note that in reply to the Plaintiff's notice demanding payment, the Defendants by their letter dated 28.5.2003 merely stated that they had not received four of the suit invoices. The Plaintiffs thereafter under cover of a letter dated 17.6.2003 forwarded their invoices. Thereafter, the Defendants never raised any contention regarding the non-receipt of the goods or the invoices.

The aforesaid facts establish that the goods were received by the Defendants.

7. In the circumstances, leave to defend granted to the Defendants conditional upon the Defendants depositing in this Court a sum of Rs.2,50,000/- within twelve weeks from today.

8. In the event the Defendants deposit the aforesaid amount, the suit to stand transferred to the list of Commercial Causes. The Defendants to file their written statement within 30 days. Discovery and Inspection within four weeks thereafter.

9. In the event the Defendants fail to deposit the

aforesaid amount, liberty to the Plaintiffs to apply for further orders.

10. On the said deposit being made, the Prothonotary and Senior Master to invest the same in any Nationalised Bank initially for a period of 2 years and shall renew the same thereafter for a period of one year from time to time.

Summons for Judgment stands disposed of accordingly.